



U.S. ARMY LEGAL SERVICES AGENCY ENVIRONMENTAL LAW DIVISION



Become a High-stepper: The National Historic Preservation Act Section 106 Programmatic Agreement Requirements

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Timing of Section 106 Compliance



- Section 106 should be completed **BEFORE** expenditure of funds or issuance of license/permit
- Section 106 process can, and often should occur concurrently with NEPA process



BUT: compliance with NEPA does not equate to NHPA Section 106 compliance



NEPA



NHPA

Sec106



Identifying and Initiating the Section 106 Process



- Identify and evaluate historic properties and scope of PA
- Involve installation staff, enlist Cultural Resources Manager as the liaison
- Assess impact of proposed action (treatment of human remains, unexploded ordnance, environmental remediation)
- Consultation is critical





Consultation with Interested Parties

Consult with SHPO, ACHP and others to obtain recommendations and find ways to make undertaking less harmful

- 1. Provide adequate documentation in advance**
- 2. Encourage frank discussion and historic information sharing**
- 3. Limitations of “interested” versus “consulted” parties**





Section 106: Foreclosure



Action: Failure to provide ACHP a reasonable opportunity to comment

Consequences:



1. AHCP sends foreclosure letter to head of agency noting failure to comply with NHPA Section 106

2. Legal challenges (injunctions) will be more difficult to defend

3. Negative Publicity





Questions